

DRAFT OF
October 11, 1979

MUZAK®

A Division of Teleprompter Corporation

STANDARD FORM LICENSE AGREEMENT

AGREEMENT, made this ____ day of _____, 19__, by and between Muzak, a division of Teleprompter Corporation (herein referred to as "Licensor") and _____ (herein referred to as "Licensee").

> Licensor has developed a background subscription music service comprised of a large number of planned musical programs, each of which consists principally of wide-range, high quality recordings with special arrangements, orchestrations and instrumentations. This musical service is programmed to consist of three programs per day, of eight hours each, and the service is designed so that no program is ever permitted to repeat. In addition, each program is designed to contain a sufficient variety of musical selections so as to prevent a sense of undue repetition on the part of listeners. Licensor's subscription music service is herein referred to as the "Muzak Program Service", it being understood, however, that the term "Muzak Program Service" refers only to the primary music service being offered by Licensor at the date of this Agreement and not any other music service which now is or in the future may be offered by Licensor. The Muzak Program Service is distributed, under Licensor's registered MUZAK trademark and service mark and under related trademarks and service marks, to subscribers. Such trademarks and service marks, together with associated logos and/or copyrights, are herein collectively referred to

as the "Marks".

Licensors desires to grant a license to Licensee which will enable Licensee to engage in the business of providing the Muzak Program Service to subscribers, and Licensee desires to accept such a license, all in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. GRANT OF LICENSE.

(a) Subject to the terms and conditions herein contained, Licensors hereby grants to Licensee, and Licensee hereby accepts, a license to engage in the business of providing the Muzak Program Service to subscribers by telephone lines or by multiplexing on frequency modulation transmission or by any other means in the following areas (and in no other areas except as provided in subsection (d) of this Section 1) (such areas being herein referred to as the "Territory"):

(b) Licensors and Licensee recognize that some outlying areas of the Territory may conceivably be more efficiently served by a licensee licensed to an adjoining territory. In the event that Licensee and the licensee licensed to serve such adjoining territory agree that such outlying areas should be served by such adjoining licensee, then such adjoining licensee and the Licensee hereunder shall present

to Licensor a written request for re-allocation of the Territory between them. Such re-allocation shall be effective upon Licensor's approval thereof, which approval shall not be unreasonably withheld.

(c) Licensor further hereby grants to Licensee the right to use the Marks during the term of this Agreement in connection with Licensee's offering of the Muzak Program Service. Licensee shall at all times seek to exploit the Muzak Program Service through the use of the Marks and Licensee shall use no other trademark or service mark in advertising and promoting the Muzak Program Service, provided that Licensee may use its own trade name and trademarks insofar as it provides services, maintenance or products incidental to the Muzak Program Service.

(d) Nothing contained herein shall prevent Licensee from offering the Muzak Program Service as provided in this Agreement in any area in which Licensor (or any subsidiary thereof, it being understood that, as used in this Section 1(d), the term "Licensor" includes the subsidiaries of Licensor) is itself offering the Muzak Program Service, provided that (i) in no event shall Licensee be entitled to use any distribution system, such as, for example, a subsidiary communications authorization (SCA), either owned by Licensor or utilized by Licensor on an exclusive basis, without in either case Licensor's prior written consent; and (ii) in the event that Licensee does offer the Muzak Program Service in any such area, it shall, in recognition of the fact that in so doing it will be exploiting the good will theretofore built

up by Licensor, [^]pay to Licensor a royalty fee, in addition to the royalty fee contemplated by Section 6(d) hereof, of 10% of its gross billings (as defined in Section 6(d) hereof) derived from its operations in an area where the Muzak Program Service is provided by Licensor, provided that the additional royalty provided for in this clause (ii) shall not apply in any case where (A) Licensor [^]cannot (using the distribution means proposed to be used by Licensee or the distribution means generally used by Licensor) serve the customers proposed to be served by Licensee or (B) Licensee has offered to sell to Licensor, at Licensee's cost of acquisition, the customer accounts in question but Licensor has refused to accept such offer.

2. LICENSOR TO SUPPLY LICENSEE WITH MUZAK PROGRAM SERVICE.

Licensor agrees to supply to Licensee the Muzak Program Service for and during the term hereof, for use by Licensee solely in accordance with the terms of this Agreement. Initially, such Muzak Program Service shall be supplied by means of Muzak magnetic tape recordings. In the future Licensor may, if at any time it so chooses, supply Licensee with the Muzak Program Service by means of satellite transmission. The following subsections apply to the provision of the Muzak Program Service by these means:

(a) In the event that the Muzak Program Service is

supplied by means of magnetic tape recordings⁴, then such recordings shall be supplied to Licensee subject to such terms and conditions as Licensor may from time to time provide in its then prevailing plan for magnetic tape recording distribution, provided that^{no} modification to the plan for magnetic tape recording distribution shall be instituted without adequate notice to the licensees and no such modification shall either materially decrease the benefits or materially increase the burdens on Licensee as compared to the benefits and burdens imposed on Licensee by the plan for Muzak magnetic tape distribution in effect as of the date of this Agreement (which plan is contained in Schedule A hereto). Licensor shall at all times retain title to, and all ownership rights in, all of the magnetic tape recordings at any time furnished to Licensee, and Licensee shall not under any circumstances sell, transfer, assign, dispose of, or encumber any of such recordings. Such recordings shall meet the technical specifications contained in Schedule B hereto. Furthermore, Licensee shall not duplicate any magnetic tape recording furnished by Muzak. In the event Licensee requires a duplicate of any Muzak magnetic tape recording for use in an on location machine supplied by Licensee to a customer because Licensee is unable to furnish such customer with the Muzak Program Service by any other means, Licensor shall prepare such duplicate provided that licensee shall reimburse Licensor for its direct out of pocket costs in preparing such duplicate and provided further that upon Licensor's request, Licensee shall provide to Licensor the cartridge or other instrumentality upon which such duplicate is to be transcribed.

Upon termination of this Agreement for any reason whatsoever or in the event of any breach by Licensee of this Agreement, Licensee shall, upon request by Licensor, promptly return to Licensor all such magnetic tape recordings¹ securely packed with transportation charges prepaid.

(b) In the event that the Muzak Program Service is supplied by means of satellite transmission, then such transmission shall meet the technical standards contained in Schedule C hereto. Licensor shall supply Licensee, at no cost to Licensee except as stated in this Agreement, with the earth station required to receive such transmissions. Licensor shall at all times retain title to, and all ownership rights in, such earth station, and Licensee shall not under any circumstances sell, transfer, assign, dispose of or encumber such earth station, provided that the foregoing shall not apply to any landlord's or other lien created as a matter of law. Upon termination of this Agreement for any reason whatsoever or in the event of the breach by Licensee of this Agreement, Licensee shall, upon Licensor's request, permit Licensor to enter onto the premises wherein the earth station is located and dismantle and remove such earth station, provided that any such entry and removal shall be accomplished in compliance with applicable local law and Licensor shall restore to its pre-existing condition the premise from which any earth station is removed. Licensor shall bear the entire

cost of installing the earth station except that if Licensee owns or leases a site satisfactory to Licenser for the installation of the earth station, and Licensee does not, for reasonable business considerations, object to Licenser's use of such site for such purpose, Licensee shall (at no cost to Licenser) make available such site for the installation and operation of such earth station for the term of this Agreement. Licenser shall use its best efforts (at its expense) to obtain whatever authorizations or licenses are required for the installation and operation of the earth station from the Federal Communications Commission ("FCC") or from any other U.S. government agency and Licensee shall use its best efforts (at its expense) to obtain whatever local zoning or other similar approvals are required for the installation and operation of the earth station, provided that Licensee shall not be required to spend more than \$500 in out-of-pocket costs in obtaining zoning and other similar approvals for any earth station.

(c) In the event that Licenser determines to supply Licensee with the Muzak Program Service by means of satellite transmission, Licenser shall promptly notify Licensee of that fact. Thereafter Licensee shall cooperate fully with the reasonable requests of Licenser so as to permit Licenser to conduct the appropriate tests of the earth station's reception of the satellite transmissions. Once such testing

is satisfactorily completed (i.e., is meeting all technical standards contained in Schedule C) and transmission of the Muzak Program Service to the earth station begins and is operational and available on a national basis, Licensee shall cease distributing the Muzak Program Service by means of magnetic tape recordings and Licensee shall promptly return to Licensor all such magnetic tape recordings in its possession except such tapes as Licensor agrees in writing may be retained for emergency use in the event of any satellite or earth station failure.

(d) Notwithstanding anything contained herein, in the event that the necessary authorizations from the FCC or other U.S. governmental agency and from the local zoning board or similar body cannot be obtained, Licensor shall be required to continue to supply Licensee with the Muzak Program Service by means of magnetic tape recordings. Such tapes shall meet the technical standards set forth in Schedule B and shall be supplied subject to the terms and conditions set forth in this Agreement.

(e) From time to time, but in no event less often than once every five years, (beginning with the year 1985) Licensor shall provide all licensees with an independently prepared report detailing Licensor's compliance with the standards established in Schedules B and/or C hereto.

3. TERM.

The term of this Agreement shall begin on the date hereof and shall continue in full force and effect for a period of

ten years from such date.

If Licensor determines that the performance of Licensee is not sufficiently satisfactory to warrant renewal of Licensee's franchise, then, at least two years prior to the expiration of this Agreement, Licensor shall notify Licensee that it does not intend to renew Licensee's franchise and the reason(s) for such decision. Such notification is intended to give Licensee the opportunity to assign its rights under this Agreement, it being understood that any such assignment is subject to Licensor's prior written consent as provided in Section 12 hereof.

In determining whether or not to renew Licensee's license, Licensor shall consider the Licensee's performance under this Agreement. In evaluating Licensee's performance under this Agreement Licensor shall consider such factors as, among others, the following: Licensee's total billings, the trend of its new billings and the degree of market penetration in the Territory. In the event that Licensor notifies Licensee that it intends not to renew Licensee's license because of Licensee's inadequate performance, Licensee shall have a period of six months from the date of such notice to attempt to improve its performance. At the end of such six month period, Licensor shall reconsider the adequacy of Licensee's performance and if such performance has sufficiently improved so that it is no longer inadequate, Licensor shall rescind its notice of intention not to renew Licensee's license. Conversely, if at the end of such six month period Licensee's performance remains

inadequate, Licensors shall inform Licensee of the reasons for this determination and the notice of Licensors intention not to renew Licensee's license shall remain in effect.

Licensors shall also have the right not to renew Licensee's license if Licensee engages in conduct which Licensors reasonably deems inimical to the best interests of the Muzak system, considered as a whole (which term includes the interests of the Muzak licensees in such system). Such right shall be limited as follows:

(i) In the event such conduct constitutes a breach of this Agreement, Licensors shall have the absolute right not to renew Licensee's license provided that Licensors has notified Licensee of such breach and Licensee has not cured such breach within the period specified in Section 9(a) hereof; and

(ii) In the event that such conduct does not constitute a breach of this Agreement, Licensors shall notify Licensee that it considers such conduct to be inimical to the best interests of the Muzak system, considered as a whole. If, after two such notices, Licensee again engages in conduct which Licensors reasonably deems to be inimical to the best interest of the Muzak system considered as a whole, then (whether or not such conduct is similar to the conduct referred to in either of the earlier notices), Licensors may notify Licensee of that fact and of the further fact that, as a result of such conduct, it does not intend to renew

Licensee's license.

In the event that, in accordance with the provisions of this Section, Licensor notifies Licensee of its intention not to renew Licensee's license, then Licensor shall have no obligation to renew such license. If Licensor does not so notify Licensee, then Licensor shall be required to offer to enter into with Licensee a new license agreement upon expiration of this license agreement, which new license agreement shall correspond to the applicable then prevailing standard form license agreement which Licensor is then bona fide offering to licensees (or prospective licensees) serving (or proposing to serve) licensed territories of comparable size to those proposed to be licensed to Licensee under such renewed agreement.

4. EXCLUSIVITY.

(a) During the term of this Agreement, Licensor shall not authorize anyone other than Licensee to provide the Muzak Program Service (or any equipment distributed by Licensor which is used in connection with such Muzak Program Service) in the Territory, provided that, notwithstanding the foregoing, Licensor, pursuant to arrangements entered into by it on a national basis, may, directly or through its subsidiaries, provide the Muzak Program Service (and, in connection with so doing, may use the Marks) in automobiles, ships, airplanes, trains, buses and other common carriers which are sold or operated within (or partly within) the Territory.

(b) During the term of the Agreement, Licensee shall not provide a music service other than the Muzak Program Service within the Territory, nor shall Licensee or any of

the persons referred to in Section 12(a) hereof be an officer, director, owner or partner of, or be employed by, or act as a consultant to, any corporation, company or firm which provides a music service within the Territory, provided that the foregoing shall not prevent (i) Licensee or any such person from owning not more than 2 1/2% of the common stock of any corporation whose stock is listed on the New York Stock Exchange or the American Stock Exchange or is reported on NASDAQ or (ii) Licensee from providing its subscribers with a music program service other than the Muzak Program Service under the circumstances described in Section 5(a) hereof, or (iii) Licensee from providing a foreground music service by means of so called "on premises" machines. The term "music service" includes not only a subscription music service (whether or not a background or foreground service and whether or not offered from a central point or by means of on-premises machines) but also radio stations which program "beautiful music" or "easy listening music" of a type which is competitive to the Muzak Program Service if such radio station provides its listeners with a special reception device tuned only to that station's signal, provided the prohibition contained herein against Licensee's relationship to a radio station which provides a special reception device tuned only to that station's signal shall apply only to radio stations which supply such reception devices after commencement of Licensee's relation to such station, provided that nothing contained herein shall prevent such radio station from honoring commitments entered into prior to the acquisition of such radio station by Licensee or any person referred to in this subsection. A music

service shall be deemed a foreground music service if it consists of musical selections containing vocals or the music is obtained directly from record company releases or the music is generally considered within the subscription music industry to be foreground music.

(c) In the event that Licensor develops a foreground music service, it shall first seek to license such service to Licensee. If, within 45 days after the date a license agreement for such foreground music service is first offered to Licensee, Licensor and Licensee have not agreed on the terms of the license agreement applicable to such foreground music service, Licensor may license such service to a third party for use in the Territory or may itself offer such service in the Territory, provided that Licensor shall not license any third party to offer such foreground music service in the Territory pursuant to a license agreement containing royalty provisions more favorable to such third party than the royalty provisions which were part of the proposed license agreement which was not accepted by Licensee. Licensor shall not license any foreground music service developed by it to any third party who also offers a background music service within the Territory.

5. MAGNETIC TAPE RECORDINGS, STUDIO PLAYBACK EQUIPMENT
AND SUBSCRIBER EQUIPMENT; PERFORMANCE STANDARDS.

(a) Licensee, when supplying the Muzak Program Service to its subscribers, shall not include any musical or other selections which are not part of the Muzak Program Service. Should the Muzak Program Service be provided by Licensor to Licensee by means of

magnetic tape recordings, Licensee shall use only such tape recordings in providing the Muzak Program Service to its subscribers, provided that, should any subscriber not be able to be served by Licensee's subchannel authorization, such subscriber may, [^]be served by duplicate tapes supplied by Licensor pursuant to Section 2(a) hereof) played by an on premises machine located at such subscriber's premises. Notwithstanding anything to the contrary contained in this Agreement, Licensee may offer a background music program service other than the Muzak Program Service to its subscribers during any period that Licensor fails to make available the Muzak Program Service to Licensee in accordance with the terms of this Agreement.

(b) Licensee may purchase studio playback equipment and subscriber equipment either from Licensor (at such price and terms as may from time to time be agreed upon) or from third parties, provided that the equipment purchased from such third parties meets such engineering standards as may from time to time be set by Licensor. Licensor's engineering standards for such third party equipment shall be reasonable and intended to protect the quality of the Muzak Program Service and the good will associated with the Muzak trade name.

The engineering standards now in effect for third party studio equipment are contained in Schedule D hereto. Upon the promulgation of engineering standards for third party subscriber equipment, such standards shall apply prospectively and Licensee shall not be required to replace or upgrade any third party subscriber equipment previously supplied to a subscriber.

(c) To the extent that Licensee is using any of the following, Licensee shall maintain the magnetic tape recordings, and all studio playback equipment, subscriber equipment and other equipment used to disseminate the Muzak Program Service in good condition and in a proper state of repair and will replace all parts, materials, and equipment as soon as necessary. With respect to any earth station that may be provided by Licensor to Licensee, Licensor shall, at its expense, supply Licensee with sufficient spare parts and components to complete swap out maintenance and repairs according to procedures to be supplied by Licensor. Licensee shall perform, at its expense, all routine swap out and other maintenance and repairs but only to the extent such maintenance and repairs can be performed by available local employees of Licensee. Licensor shall perform, at its expense, all maintenance and repairs beyond the capabilities of Licensee's local employees. Licensor may from time to time adopt (or modify previously existing) reasonable performance standards (the "Performance Standards") applicable to the dissemination by Licensee of the Muzak Program Service, provided that any Performance Standards promulgated after the date of this Agreement shall (i) apply only to equipment installed after the date of such promulgation and (ii) not exceed the then current state of the art. Licensee shall at all times use its best efforts to meet such standards as they shall be in force from time to time. Licensor may, upon giving Licensee 15 days' written notice, inspect and test the system during normal business hours to determine whether it complies with the Performance Standards. If

If requested by Licensor, Licensee shall use its best efforts to cause Licensee's subscribers to permit Licensor to have access to such subscribers' premises in connection with any such inspection or testing. Licensor shall furnish Licensee with reports showing the results of any tests conducted by it pursuant to this section. Licensee shall remedy any deficiencies shown by such reports within 90 days after receipt thereof, provided that if Licensee disputes Licensor's contention that it is not meeting the Performance Standards, the parties shall attempt to resolve the matter by conducting a new test under the joint supervision of their respective engineers. In the event that such new test fails to resolve the dispute the matter shall be resolved by litigation. Licensor's right to terminate this Agreement because of Licensee's failure to observe any performance standard shall be governed by Section 9 hereof. The Performance Standards shall be reasonable and intended to protect the quality of and the goodwill associated with the Muzak trade name. The Performance Standards in force as of the date of this Agreement are set forth in Schedule E hereto.

(d) Licensee shall promptly advise Licensor if any magnetic tape recording is defective, worn out or mutilated. Upon being so advised, Licensor shall promptly furnish Licensee with a replacement tape which is not defective, worn out or mutilated.

6. BASE ROYALTY; ROYALTIES.

(a) Licensee shall pay Licensor a base royalty as provided in this subsection. Such base royalty shall depend upon

the number of locations within each market in the territory from which Licensee plays the Muzak tape recordings or otherwise disseminates the Muzak Program Service to subscribers (each such location being herein referred to as a studio). The base royalty payable with respect to each studio shall depend upon the population of the market in which such studio is located as more specifically set forth in the table below:

If the Population (based upon
the latest available official
U.S. Government Census)
of the market in which the
studio is located is

Then the monthly base
royalty payable with
respect to each studio
within such market
shall be

0 - 99,000	\$230
100,000 - 224,999	280
225,000 - 349,999	330
350,000 - 749,999	380
750,000 and over	480

Schedule F hereto shows the identities of the markets located in the territory and the populations of each of such markets based upon the latest available official U.S. Government census.

(b) If Licensor supplies Licensee with the Muzak Program Service by means of magnetic tape recordings, then Licensee shall also pay Licensor, in addition to any other payments required hereunder, the amount necessary to reimburse Licensor for any increase in its out-of-pocket costs for shipping the magnetic tape recordings in excess of such costs as of the date hereof.

(c) If Licensor supplies Licensee with the Muzak Program Service by means of satellite transmission, then Licensee shall also pay Licensor, in addition to any other payments required hereunder, an amount necessary to reimburse Licensor for its costs in providing

such program service by means of satellite transmissison. These include but are not limited to the cost of (i) obtaining satellite transponder time, (ii) remodelling of the Westbury, NY transmission facility, (iii) installation of a programming and satellite transmission control computer, (iv) installing a state of the art tape library and storage system, (v) converting all music in the active library to a digitized playing format, and (vi) purchasing, installing and performing non-routine maintenance on satellite receive stations for all Licensees. Licensor and Licensee agree that this amount shall be \$160 per month for the first satellite receive station and \$200 per month for each additional satellite receive station.

(d) Regardless of the means of supplying the Muzak Program Service and in additon to any payments required pursuant to Sections 6(a) and 6(b) or 6(c) above, Licensee shall further pay to Licensor a monthly royalty fee equal to 10% of Licensee's "gross billings". The term "gross billings" means all sums (whether in money or any other form) due to Licensee from its subscribers in connection with (i) its provision of the Muzak Program Service and (ii) its lease (but not its sale) of equipment to subscribers used in connection with the reception of the Muzak Program Service, provided that this clause (ii) shall not apply to the lease of communications equipment which is extraneous to the Muzak Program Service and which would not ordinarily be included as equiment leased under a standard Muzak subscription agreement. Gross billings shall also not include (i) any amount collected by Licensee and required to be remitted by it

as sales or similar taxes, (ii) one time installation charges billed not later than 90 days following completion of the subject installation work, (iii) any billings for service and maintenance of subscriber owned equipment, (iv) all ad hoc charges (i.e., extraordinary or one time charges) for service and maintenance work actually performed on subscriber leased equipment provided that said ad hoc charges are billed not later than 90 days following the completion of the subject service and maintenance work, and (v) any penalties for late payments or finance or interest charges imposed by Licensee, provided the amount of such penalties and charges does not exceed standard industry practice. Furthermore, gross billings shall not include an amount equal to (i) the amount paid by Licensee as performing rights fees to ASCAP, BMI, or similar performing rights organizations, and their successors and assigns and (ii) the amount of any billings (previously included as part of gross billings) which in the month in question are written off as uncollectable. Reference is made to Section 1(d) for information concerning additional monthly royalty fees which may be due to Licensor under the circumstances described in such Section.

7. PAYMENTS AND REPORTS; RECORDS; INSPECTIONS.

(a) The base royalty fee contemplated by Section 6(a), the incremental tape delivery charge contemplated by Section 6(b) and the satellite charge contemplated by Section 6(c), shall, to the extent applicable, be payable in advance on a monthly

basis and shall be due by the first day of the month to which they relate. The royalty fee contemplated by Section 6(d) shall be payable on a monthly basis and shall be due within 30 days after the end of the month to which it relates. Payment of such monthly royalty fee shall be accompanied by a statement, in such detail as Licensor may from time to time reasonably request, showing how such fee was computed.

(b) Licensee shall keep full and accurate records and books of account, wherein all transactions shall be recorded, relating to its offering of the Muzak Program Service. Licensee shall make available such records and books of account to Licensor if requested by Licensor for inspection and audit.

(c) Licensor may, upon giving Licensee 15 days written notice, enter the premises of Licensee (and of any person doing business in the Territory (an "affiliated person") controlling, controlled by or under common control with Licensee) during normal business hours for inspection and audit of the business and records of Licensee or of such affiliated person, provided that such inspection and audit shall be no more extensive than is required to verify that none of Licensee's or such affiliated person's revenues should have been reported as gross billings of the Licensee, and that Licensee's gross billings have been properly computed in accordance with the provisions of Section 7(d) of this

Agreement. Licensee shall co-operate with any such inspection and audit. Licensee shall, if requested by Licensor, use its best efforts to cause Licensee's subscribers to permit Licensor (if accompanied by a representative of Licensee) to have access to such subscribers' premises in connection with any inspection or audit being performed by Licensor on Licensee's business or records.

(d) Licensor shall not have the right to make any mechanical copies of Licensee's books and records during any audit hereunder, provided that Licensee may, in the interests of efficiency, extend such right to Licensor. Nothing contained herein shall be construed as in any way limiting Licensors' right to manually copy or make abstracts of Licensee's or any affiliated persons' books and records or to make any notes or the like whatsoever.

(e) In the event that any audit conducted by or on behalf of Licensor results in a determination that there has been either an underpayment or overpayment of the amounts due Licensor hereunder, then, within 15 days of such determination, Licensee or Licensor, as the case may be, shall pay to the other the amount of such underpayment or overpayment, ^{provided} that in the event that Licensee disputes the results of any such audit, the parties shall attempt to resolve the matter by conducting a new audit under the joint supervision of their respective independent certified public accountants. In the event that such new audit resolves the dispute the cost of each party's independent certified public accountants shall be borne by such party. In the event that such new audit fails to resolve the

dispute, the matter shall be resolved by litigation, in which case the party who loses such litigation shall pay the entire cost of the aforementioned audit (i.e., the cost of its certified public accountant). Licensor's right to terminate this Agreement because of the failure to pay royalties shall be determined in accordance with Section 9(a) hereof.

8. MARKETING AND PROMOTION; ASSISTANCE OF LICENSOR

(a) Licensee shall use its best efforts in promoting the sale of the Muzak Program Service, in serving the subscribers to such service and in generally developing its business. Licensor shall also use its best efforts in promoting the sale of the Muzak Program Service. Notwithstanding the foregoing, no particular level of advertising expenditures shall be required of either Licensor or Licensee.

(b) Licensee shall co-operate with any advertising or promotional campaigns conducted by Licensor. Licensee shall promptly discontinue any advertising or promotion which Licensor informs Licensee is, in Licensor's judgment, inimical to Licensor's reputation.

(c) Within the limits of its available personnel, Licensor, when so requested by Licensee, shall make available technical and marketing assistance to Licensee. The charge for such assistance shall be mutually agreed upon by the parties.

9. TERMINATION OF THIS AGREEMENT.

(a) Licensor shall have the right to terminate this Agreement

(i) upon any material breach of any provision of this Agreement by Licensee which is continuing 20 days after notice thereof by Licensor, provided that in the event that any alleged material breach is disputed by the Licensee, this Agreement may not be terminated unless such breach is continuing ten days after the date that such breach is finally determined (which, if such breach is determined by litigation, shall be the date when any court order becomes final and non-appealable). In the event that the existence or non-existence of any alleged material breach is determined by litigation the losing party in such litigation shall pay all costs associated with such litigation including, without limitation, the attorneys' costs and expenses of the successful party, plus interest on all such costs from the date such costs were incurred at the rate of 10% per year.

(ii) in the event of any voluntary or involuntary assignment or attempted assignment of Licensee's rights under this Agreement or any voluntary or involuntary transfer of the assets of Licensee which significantly affects Licensee's ability to perform its obligations under this Agreement (it being understood, however, that

any transfer in connection with a bona fide financing transaction shall not be deemed to be such a transfer) or any voluntary or involuntary issuance, sale or transfer of the voting stock of Licensee by any person (or related group of persons) such that after such issuance, sale or transfer the person (or related group of persons) to whom such stock was issued, sold or transferred owns for the first time 50% or more of the voting stock of Licensee or any transfer of control of Licensee, in any of such cases without the prior written consent of Licensor in accordance with Section 12 hereof; or

(iii) in the event Licensee admits in writing its inability to pay its debts, makes a general assignment for the benefit of its creditors, is adjudicated bankrupt or insolvent (and such adjudication is not set aside within 60 days) or consents to the institution of such proceeding, seeks reorganization or relief of any kind under any law relating to relief of debtors or consents to such a proceeding, or is subject to a court decree or order which remains in effect for 60 days, relating to bankruptcy, insolvency or relief of debt in any manner, or becomes a party to any litigation relating to the bankruptcy, arrangement or similar proceeding against any person which, directly or indirectly, controls Licensee and is not dismissed as a party from such litigation within 90 days after being made

a party thereto, unless such proceeding does not significantly affect Licensee's performance of its obligations under this Agreement or otherwise materially adversely affect its business.

(b) Licensee shall have the right to terminate this Agreement upon any material breach of any provision of this Agreement by Licensor which is continuing 20 days after notice thereof by Licensee, provided that in the event that any alleged material breach is disputed by the Licensor, this Agreement may not be terminated unless such material breach is finally determined (which, if such breach is determined by litigation, shall be the date when any court order becomes final and non-appealable). In the event that the existence or non-existence of any alleged breach is determined by litigation the losing party in such litigation shall pay all costs associated with such litigation including, without limitation, the attorneys' costs and expenses of the successful party, plus interest on all such costs from the date such costs were incurred at the rate of 10% per year.

(c) No termination of this Agreement shall affect any obligation, including any obligation arising as a result of a breach of this Agreement, of either of the parties accrued up to the date of termination.

10. RELATIONSHIP OF THE PARTIES UPON TERMINATION
OR EXPIRATION OF THIS AGREEMENT.

(a) Upon termination or expiration of this Agreement Licensee shall immediately cease providing the Muzak Program Service to any of its subscribers and shall promptly deliver to Licensor any material supplied to it by Licensor, including without limitation, any promotional material or magnetic tape recordings in its possession, but excluding any material owned by Licensee.

(b) Upon termination or expiration of this Agreement, Licensee shall (i) cease using the Marks and (ii) cease directly or indirectly holding out to its subscribers or other persons that it is a Muzak licensee and is authorized to provide the Muzak Program Service.

(c) After termination of this Agreement, neither Licensor nor Licensee shall use for its own purposes or divulge to any third party any trade secrets or confidential information of the other which are from time to time designated as such, including, without limitation, any customer lists, revenue data and any information obtained from ASCAP, BMI or similar reports provided by Licensee to Licensor.

11. PERFORMANCE RIGHTS FEES; TAXES.

(a) Licensee shall be responsible for paying, and shall pay, all music performance rights fees assessed by any music performing rights society, provided that Licensor shall pay the musical performance fees due to SESAC and so Licensee shall not be required to pay such fees to SESAC. Licensee shall furnish Licensor, upon Licensor's

request, copies of the reports furnished by it to any music performance rights society, provided that Licensor shall not request such copies for more than three months annually.

(b) Licensee shall be responsible for paying, and shall pay, all applicable local, state and federal taxes of whatever nature, now or hereafter enacted, relating to Licensee's provision of the Muzak Program Service, including any sales or use tax on equipment or recordings sold or furnished to Licensee by Licensor.

12. TRANSFER OF BUSINESS OR CONTROL OF LICENSEE.

(a) Licensee may not (voluntarily or involuntarily) assign any of its rights under this Agreement or (voluntarily or involuntarily) transfer such of its assets as would significantly affect its ability to perform its obligations under this Agreement to a third party or issue any voting stock to any person (or related group of persons) such that after such issuance such person (or related group of persons) for the first time owns 50% or more of the voting stock of Licensee or permit any person other than those persons whose names appear on the signature page of this Agreement to control Licensee, without, in each case, receiving the prior written consent of Licensor. Similarly, by their signatures to this Agreement, each of the stockholders of Licensee agrees not to sell or transfer any of such stockholder's stock to any person or related group of persons if after such transfer such person or related group of persons would for the first time own more than 50% of the voting stock of Licensee, unless

prior to such transfer such stockholder has received Licensor's written consent thereto. Licensor shall not unreasonably withhold any consent required of it pursuant to this subsection.

(b) All assignments of Licensee's rights under this Agreement must be made in accordance with this Section 12 and Licensor shall not be bound by any assignment not made in accordance with such terms.

(c) Notwithstanding anything contained in this Section 12, any assignment, sale, transfer or issuance to any person (an "Immediate Family Member") who is a member of the immediate family of a person (a "Control Person") who, directly or indirectly, controls Licensee, or to a corporation controlled by an Immediate Family Member or Control Person, shall be permitted.

13. MISCELLANEOUS.

(a) Licensee shall not use the name Muzak or any derivative thereof in the name or other designation of any corporation, partnership or other business enterprise and shall have no connection with any business which does so. Licensee shall not use the name Muzak or any derivative thereof or any related trade name, trademark or service mark (including the Marks) except in connection with the performance of its obligations under this Agreement. Licensee shall not use any trade names, trademarks or service marks which simulate or are confusingly similar to the MUZAK trade name, or to the Marks. Licensee shall not use the word "MUZAK", either alone or in combination with other words, in written

material concerning the offering or advertising of the Muzak Program Service except in the following forms:

"MUZAK" followed by a ®

or

"MUZAK - Reg. U.S. Pat. Off."

or except in such other form as may in the future be appropriate to indicate that the word "MUZAK" is a registered trademark and service mark. In the event Licensor informs Licensee that any derivative of the word "MUZAK" is also a registered trademark or service mark, then the foregoing sentence shall also apply to such derivative.

(b) Licensee acknowledges that Licensor is the exclusive owner of the Muzak Program Service and the Marks. Nothing contained in this Agreement or in the dealings of the parties hereto shall be deemed to create any ownership interest in Licensee in the Marks or in the goodwill associated with the Muzak Program Service.

(c) Licensee shall not contest the validity or enforceability of the Muzak tradename, or of the Marks, and shall promptly notify Licensor in writing of any known infringement of the Muzak Program Service or of the Marks or of any actual or threatened litigation or proceeding related to the Muzak Program Service or to the Marks regardless of whether Licensee is a party thereto. Licensor shall have the right, at its discretion and expense, to undertake and control the defense, prosecution or settlement of any such litigation involving

Licensee and relating to the Muzak Program Service or the Marks through counsel of Licensor's choosing, and Licensee agrees, upon request of Licensor or its counsel, to execute any and all documents, and to do such acts and things as may, in the opinion of Licensor's counsel, be necessary to carry out such defense, prosecution or settlement, provided that Licensee shall not be required to execute any document or do any act or thing which has not first been approved by counsel to Licensee, which approval shall not be unreasonably withheld. In deciding if such approval should be rendered, counsel to Licensee shall consider only whether Licensee would be legally prejudiced if Licensee complied with Licensor's request. Licensee shall not institute any litigation relating to the to the Muzak tradename or to the Marks against any person with out Licensor's prior written consent.

(d) Licensee shall take appropriate steps to insure that there is no unauthorized reception of the Muzak Program Service. Upon the request of Licensor, Licensee shall take whatever measures may be reasonably necessary to improve the security of its delivery system so as to prevent any such unauthorized reception. Licensee shall not reproduce the Muzak Program Service and shall not permit any other person to reproduce the Muzak Program Service.

(e) In the event that Licensor (either alone or together with one or more of its licensees) negotiates a national or regional deal (as hereinafter defined) which contemplates the provision of the Muzak Program Service,

then Licensee shall provide such service to such locations according to the terms, including price, specified in such deal, provided that Licensee shall not be required to provide such service in accordance with such terms unless and until the national or regional deal has been submitted to a vote of the affected licensees (excluding, for this purpose, any owned and operated operation of Licensor which would be required to provide the Muzak Program Service pursuant to the terms of such national or regional deal) and licensees serving territories containing more than 51% of the locations affected by such national or regional deal have accepted such national or regional deal. A "national or regional deal" is a contract negotiated by Licensor which provides for the offering of the Muzak Program Service in at least 50 different locations no more than 25% of which are located in a single franchised territory.

(f) Neither Licensor nor Licensee shall have any liability to the other or to any other person as a result of the failure of either of such parties to perform its obligations hereunder, nor shall such failure be considered a breach of this Agreement if, and to the extent that, such failure is due to any failure of any supplier, any failure of equipment of others, any action or claim by any third party, any labor dispute, fire, flood, legal enactment, government regulation, act of God or other like or unlike event beyond the reasonable control of such

party. Notwithstanding the foregoing, each of Licensor and Licensee shall use its best efforts, consistent with the exercise of reasonable business judgement, to remedy expeditiously any such failure applicable to it, and if such failure is not remedied within 12 months after the start thereof, the other party may terminate this Agreement without liability to either party.

(g) Licensee is not a partner or co-venturer of Licensor but an independent contractor. ^ In the event of any breach by Licensor of its obligation to deliver the Muzak Program Service as provided in this Agreement, Licensee's damages shall be limited to the cost of obtaining another background music service and, in no event, shall include any claim for lost profits or good will.

(h) Neither Licensee nor Licensor shall use any trade secret or confidential information (designated as such) of Licensor or Licensee, as the case may be, in connection with the sale or marketing of any music program service except the Muzak Program Service. Licensor designates the information referred to on Schedule G hereto as being information which, as of the date of this Agreement, is in Licensee's possession and is confidential or a trade secret of Licensor.

(i) Any notice or communication given pursuant to this Agreement shall be in writing and delivered or mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given three days after the date mailed), as follows:

(a) if to Licensor:

MUZAK
A Division of Teleprompter Corporation
888 Seventh Avenue
New York, N.Y. 10019

Attn: President
Copy: Barry P. Simon, Esq.

(b) if to Licensee:

COMCAST MUSIC NETWORK
Divisional Office
One Belmont Avenue
Bala Cynwyd PA 19004

Attn: Jerome Purcell-President

Copies to: Comcast Corporation
One Belmont Avenue
Bala Cynwyd PA 19004

Attn: Ralph Roberts
Chairman of the Board

Alan Reuben Esq
Wolf Block Schorr
& Solis-Cohen
Packard Bldg.
12th Floor
Philadelphia PA 19102

(j) If any one or more of the provisions of this Agreement should be found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(k) This Agreement ^{supersedes} all prior understandings, written or oral relating to the subject matter hereof. This Agreement may not be modified or amended except by a writing signed by the party charged with such amendment or modification.

(l) Subject (to the extent applicable) to Section 12 hereof, this Agreement may be assigned and, in any such case, shall be binding upon and inure to the benefit of the assignee.

(m) No delay on the part of either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(n) This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement, and either party may execute this Agreement by signing one of such counterparts.

(o) This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such state.

A handwritten mark, possibly a signature or initials, consisting of a large, stylized 'Z' or '7' shape.

IN WITNESS WHEREOF, the parties hereto have executed
and delivered this Agreement as of the date first above written.

MUZAK
A Division of Teleprompter Corporation
("Licensor")

By _____

("Licensee")

By _____

To the extent that Section 12(a) of the above Agreement imposes
obligations on us as shareholders of the Licensee referred to
in such Agreement, we hereby accept such obligations.

